

REMARKS

Reconsideration of this application, in view of the foregoing amendments and the following remarks, is respectfully requested.

Specification

The abstract of the disclosure is objected to because of certain informalities. Applicants have amended the Abstract to remove informalities.

Claim Rejections - 35 USC § 103(a)

Claims 1, 8, 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHale USPN 6014431 in view of Liu USPN 6349096. Applicants respectfully traverse these rejections.

There are three basic criteria to establish a *prima facie* case of obviousness under 35 U.S.C. §103(a). First, there must be some suggestion or motivation in the cited references to modify or combine their teachings; second, there must be reasonable expectation of success; and third, the prior art references must teach or suggest all the claim limitations. See M.P.E.P §2142. As to claim 1, the combination of McHale and Liu does not teach or suggest all claim limitations.

1. The combination of McHale and Liu does not teach or suggest all claim limitations.

Claim 1 recites a DSL modem with various elements. The Examiner has cited a communication server that includes a modem pool in McHale. McHale does not even describe the structure of the DSL modem used in the modem pool thus it is not clear what comparable elements are used in the DSL modem pool as compared to the DSL modem recited in claim 1.

Further, the Examiner has stated that "... connection between 104 and 108 are controlling to switch to the positions; controller 80 and output 84 in figs. 2, 3) and for then detecting whether DSL service exists (McHale fig. 10a: detector 508 detects line interface 500 but does not teach

detecting whether DSL service exists but it would be obvious for it to teach this as explained below)...” (Emphasis added). Applicants would like to respectfully point to the Examiner that in the cited sections, McHale does not describe detecting the DSL service instead it describes a detector 508 for detecting “a request for service on the associated receive data pair 506 and, upon detection, provides a signal to controller 80 indicating a request for service.” (Col. 15, lines 62-67, emphasis added). In McHale, the communication server is already connected to a data line 54 and does not need to detect the existence of a DSL service. In fact, this concept is clearly described in figure 1 and corresponding description. The communication server only receives a data line 54 after the splitter 50 splits POTS and data signals and a DSL service is assumed to exist on lines 54. For McHale, it is only a matter of determining whether a subscriber is requesting a service of a DSL modem or not (*see* col. 1, line 55 – col. 2, line 64). Thus, the communication server does not receive any other signal but data on lines 54. Therefore, McHale does not teach detecting whether DSL service exists along the pair of conductors as recited in claim 1.

2. The combination of cited reference does not suggest or provide motivation to modify or combine their teachings.

As explained above, the communication server in McHale receives dedicated data lines and POTS data has already been removed from the line before the lines are connected to the communication server (*see* figure 1 and corresponding description). Therefore, McHale does not even need to detect the DSL service on the incoming lines. The Examiner has stated that

“... one of ordinary skill in the art, would have been motivated to combine the teachings of McHale with Liu because McHale suggests selecting active non dedicated lines (something broad) in general and Liu suggests the beneficial use of routing based on the detection of whether DSL service exists such as if it is analog voice instead of DSL, the system will route communications outside of the DSL system (Liu col. 8 lines 44-50) in the analogous art of determining whether DSL exists.” (Emphasis added)

First, McHale does not even suggest a need for detecting whether a DSL service exists on a line or not because as explained above, McHale uses data lines only. Second, the selection of non-dedicated lines in McHale is referred to the non-dedicated data lines which do not have a

dedicated modem in the modem pool. McHale is directed towards allowing a service provider to overbook DSL lines and assign a modem from the modem pool based on the request for service. In McHale, the data must be separated before the communication server receives the request so a modem can be assigned accordingly. In contrast, Liu determines a request for DSL/Voice service and routes the call accordingly. This function is performed by a splitter 25 in McHale. Thus, one ordinary person skilled in the art will not duplicate this function in McHale. Accordingly, the teachings of McHale and Liu cannot be combined. Further, the combination does not add to the description (or lack thereof) of a DSL modem in McHale and does not teach a DSL modem as recited in claim 1.

3. There cannot be reasonable expectation of success in combining the teachings of McHale and Liu.

As explained above, the combination of McHale and Liu does not change the function of McHale at all. In fact, it duplicates the function of separating voice/data in McHale without adding any additional functionality. The combination does not add to the teaching of a DSL modem. McHale does not even describe a DSL modem it only describes a communication server that uses a modem pool. Liu on the other hand describe a call routing mechanism. Thus, the combination cannot successfully describe a DSL modem as recited in claim 1.

Accordingly, the combination of cited references do not teach, suggest, or describe a DSL modem as recited in claim 1 and claim 1 is patentably distinguishable from the combination of cited references.

Claim 8 depends from claim 1 and is patentably distinguishable form the combination of cited references for at least the same reasons as claim 1. Further, as explained above, the communication server of McHale is directed towards assigning a modem based on a service request received on incoming data lines. Thus, McHale assumes a data input and does not need to detect whether DSL tone exists on the line. Accordingly, claim 8 is further patentably distinguishable from the combination.

Claims 10 and 16-21 depends from claim 1 and is patentably distinguishable form the combination of cited references for at least the same reasons as claim 1.

Applicant believes this application and the claims herein to be in a condition for allowance. Should the Examiner have further inquiry concerning these matters, please contact the below named attorney for Applicant.

Respectfully submitted,



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